IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 875 OF 2003

Damodar Madhavrao Dhatrak & Ors. ..Appellants

versus

Sanjay Pundalik Bhadage ..Respondent

Mr. H. E. Pawe for the Appellants.

Mr. B. D. Joshi for the Respondent.

CORAM : D. G. DESHPANDE,J.

DATE : 24TH AUGUST,2005

ORAL ORDER :

1. Heard learned counsel for the appellants and the respondent.

2. Respondent is the father of the minor daughter, who filed an application before the 2nd Addl. District Judge, Nashik, for guardianship and custody of the minor Karishma who at the time of the said application in 2002 was six years of age. The appellant No.1 is the maternal grand father of the minor and appellant No.2 is the maternal uncle of the minor Karishma. Hemlata was married to the Respondent. She gave birth to two daughters and

committed suicide or got herself burnt in closed room. Husband - respondent tried to save her but he sustained 30% burn injuries. Both were admitted in the hospital. Hemlata succumbed to her injuries. Appellants No.1 and 2 lodged complaint against the respondent under Section 498A read with 306 of I.P.C.

3. When the husband had filed petition for getting custody of the minor, admittedly she was in custody of the appellants. husband had also earlier filed an application under Section 97 of the Cr.P.C. for getting her custody. The petition before the District Judge was opposed by the appellants, firstly on the ground that when Hemlata committed suicide it was not in the interest of the minor to be handed over to the husband - respondent. Secondly, according to them the court had examined minor Karishma in the court wherein the minor has stated that she does not want to go to her father as he was responsible for her mother’s death. Both these grounds were considered by the trial court minutely, and they were rejected, and therefore this Appeal.

4. Counsel for the appellants made similar submissions before me. According to him the respondent - husband is facing charge under Section

498A read with 306 of I.P.C.; Hemlata died because of the ill-treatment given and that the lower court has recorded the statement of minor Karishma who showed her unwillingness to go to the father and made allegations against him, therefore, according to the appellants, the father - respondent was not at all competent to get the custody of the minor. A copy of the charge sheet was also tendered to me by the counsel for the appellants. Both these aspects have been considered by the trial court. The trial court has given a well reasoned judgement and rejected the contention of the appellants. So far as statement of Karishma before the court is concerned, the court itself has recorded that Karishma made statement of the aforesaid nature but court found that her statement was not at all recorded during investigation, nor there is anything to show that she was eye witness to the incident. The court found that the Karishma was appeared to be tutored because she was in custody of the appellants No. 1 and 2 during that period. The court also found that the respondent was not in any way harassing or troubling or torturing the minor and court had rightly come to the conclusion that normally father would not ill treat his children. The court also found that one of the daughter was with the respondent and there was no allegation against him that he was ill-treating her. I do not

find any reasons to come to an different conclusion. The father is the natural guardian, and as rightly pointed out by the counsel for the respondent from the judgment of this Court reported in **AIR 1996 BOMBAY 221 Mahadeorao son of Zabuji Ugale vs. Kisanraon son of Mahadeorao Lawange,** this is also a case wherein the welfare of the minor was regarded as a prime consideration. There is nothing on record to show that the granting custody of the minor to the respondent would be against her welfare. All his conduct throughout right from the stage of filing application under Section 97 shows that the respondent cares for his daughters.

5. For all these reasons there is no merit in this appeal the same is dismissed along with civil applications. Judgment of the trial court is maintained and upheld. No order as to costs.

24.8.2005 (D.G. DESHPANDE, J.)